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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,621	12/17/2003	Thomas M. Walker	243847US23CONT	4059
22850	7590	07/06/2007		
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER LE, MIRANDA	
			ART UNIT 2167	PAPER NUMBER
			NOTIFICATION DATE 07/06/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/736,621

Applicant(s)

WALKER ET AL.

Examiner

Miranda Le

Art Unit

2167

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

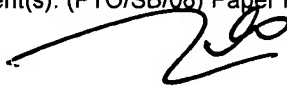
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: None.  
Claim(s) objected to: None.  
Claim(s) rejected: 1-43.  
Claim(s) withdrawn from consideration: None.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
TIM VO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100



Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments do not overcome the final office action.

1. Levy does not disclose an interface wherein said interface is configured to receive an input of a diagnosis entered by said physician.

Applicants argue that "the process described in Levy begins with a user entering symptoms, and based on these symptoms, a diagnosis is generated. Thus the process described in Levy does not begin with a physician entering a diagnosis.

Firstly, it is noted that the interface of Levy discloses the process of user entering data, therefore, the Levy's user can be equated to "a physician" of the claim limitations.

Secondly, the user of Levy entered symptoms in order to generate a diagnosis, therefore, symptoms of Levy equates to "input of a diagnosis" of the claim limitations.

2. Combination of Segal and Levy:

First, applicant seems to be questioning whether the Segal and Levy references are combinable to reasonably establish the prima facie case of obviousness under 35 USC 103.

In response to the preceding arguments, the examiner submits that in order for references to be combinable to reasonably establish the prima facie case of obviousness under 35 USC 103, they must be analogous and within the same field of endeavor.

In this case, the instant application is directed to systems, methods, and computer products for clinical information capture and management and specifically to systems and processes by which electronic medical records may be created and modified in the clinical environment of a patient encounter.

Analogously, Segal and Levy are directed to the same field as systems and methods for diagnosing medical conditions and creating electronic medical records. (Abstract)

Segal teaches all the limitations of claims 1, 14, 27 except the following claimed limitations, however, in the complement, Levy teaches:

wherein said interface is configured to receive an input of a diagnosis entered by said physician (i.e. Physicians evaluating chest pain in office setting; See TABLE 6, col. 11, lines 1-23), and in response to the entered diagnosis, the interface is configured to output one or a plurality of said diagnosis specific pre-populated templates that correspond with the diagnosis entered by the physician (See TABLE 6, lines 1-23);

diagnosis specific pre-populated templates being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting (i.e. Physicians evaluating chest pain in office setting; See TABLE 6, col. 11, lines 1-23).

As discussed in the final office action and in view of the rationale as explained in (1), it would have been obvious to one of ordinary skill of the art having the teaching of Segal and Levy at the time the invention was made to modify the system of Segal to include the limitations as taught by Levy.

One of ordinary skill in the art would be motivated to make this combination in order to communicate about a diagnosis that requires a professional decision and provide patients with a means for making their own health care decisions by empowering patients with the means for potential self diagnosis of symptoms in view of Levy, as doing so would give the added benefit of 1) individual clinical experiences provide the foundation for diagnosis, treatment and prognosis, with the measure of authority being proportional to the weight of individual experience, 2) pathophysiology provides a foundation for clinical practice, 3) medical training and common sense are sufficient to enable a physician to evaluate new tests and treatments, 4) clinical experience and expertise in a given subject area are sufficient foundation to enable a physician to develop clinical practice guidelines.

Consequently, Segal and Levy, as combined, teach the step of "wherein said interface is configured to receive an input of a diagnosis entered by said physician, and in response to the entered diagnosis, the interface is configured to output one or a plurality of said diagnosis specific pre-populated templates that correspond with the diagnosis entered by the physician; diagnosis specific pre-populated templates being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting".

Applicant has made a piecemeal analysis of the references. Applicant is therefore reminded that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant's arguments have been fully considered but they are not persuasive.